TAN SEOW SAN

v.

ONG & CO. PTE. LTD.

HIGH COURT MALAYA, JOHOR BAHRU
MOHD. YUSOF ABDUL RASHID J
[BANKRUPTCY PETITION NO. 82 OF 1980]
30 JANUARY 1982

BANKRUPTCY: *Consent judgment obtained in Singapore High Court - Registered in Malaya under s. 4 Reciprocal Enforcement of Judgments Act 1958 - Application to stay bankruptcy petition and all further proceedings - Section 6(5) Bankruptcy Act 1967 - Separate action by judgment debtor against petitioning creditor pending in High Court - Whether stay should be under s. 6(5) or s. 97 of the Act.*

This case is an application by the judgment debtor to stay all further proceedings in this bankruptcy petition under s. 6(5) of the Bankruptcy Act 1967, pending the outcome of another seperate Johore Bahru High Court civil suit (where the judgment debtor claims that the petitioning creditor is in debt to him for a certain sum.)

Held:

[1] Section 6(5) of the Bankruptcy Act has no application since in this case the judgment debtor had not denied that he is indebted to the petitioning creditor, neither did the judgment debtor aver that the amount of the debt would not justify the petitioning creditor in presenting the petition against him.

[2] The judgment debtor did not take any Court action either to set the consent judgment awarded by the Singapore Court nor did he apply to this Court to have the registered judgment under s. 4 of the Reciprocal Enforcement of Judgments Act, 1958 set aside.

[3] In the circumstances, the judgment debtor was in fact seeking for a stay of the proceedings under s. 97 of the Act pending the outcome of the civil claim and this was not an application for stay of proceedings under s. 6(5) of the Act.

[4] The motion fails as the petitioning creditor has a *prima facie* right to an order unless the debtor has established some very special circumstances which would justify the Court in departing from its usual practice.

[Motion dismissed with costs.]

Legislation referred to:
Bankruptcy Act 1967, ss. 6(3), (5), 97
Reciprocal Enforcement of Judgments Act 1958, s. 4

For the petitioning creditor - N. Jegetheesan
For the judgment debtor - Thara Singh

JUDGMENT

Mohd. Yusof Abdul Rashid J:

The judgment debtor applies by motion for the dismissal of the bankruptcy petition under s. 6(3) of the Bankruptcy Act 1967, alternatively, for the stay of all further proceedings in the bankruptcy under s. 6(5) of the Act pending the outcome of Johore Bahru High Court

Civil Suit No. 263 of 1980, whereby the judgment debtor claims that the petitioning creditor is in debt to him in the sum of RM132,496.25. When the motion came up for hearing, counsel for the judgment debtor chose only to proceed on the application for stay of further proceedings under s. 6(5) of the Act, abandoning the application under s. 6(3) thereof.

Now, s. 6(5) of the Act provides:

> (5) Where the debtor appears on the petition and denies that he is indebted to the petitioner, or that he is indebted such an amount as would justify the petitioner in presenting a petition against him, the Court, on such security, if any, being given as the Court may require for payment to the petitioner of any debt which may be established against the debtor in due course of law and of the costs of establishing the debt, may, instead of dismissing the petition, stay all proceedings on the petition for such time as may be required for trial of the question relating to the debt.

In my judgment, s. 6(5) of the Act has no application since in this case the judgment debtor has not denied that he is indebted to the petitioning creditor; neither does the judgment debtor aver that the amount of the debt would not justify the petitioning creditor in presenting the petition against him. It is common ground that the petitioning creditor had obtained a consent judgment from a Singapore High Court judge on 29 March 1974 for a sum of RM79,587.50 and the said consent judgment was duly registered in this Court on 21 January 1975 under s. 4 of the Reciprocal Enforcement of Judgments Act 1958, claiming that the judgment debtor was indebted to the petitioning creditor in the sum of RM141,567.41. The judgment debtor is not taking any Court action either to set aside the consent judgment awarded by the Singapore High Court nor is he applying to this Court to have the registered judgment set aside. Instead, the judgment debtor has filed a claim against the petitioning creditor alleging that the latter is indebted to him in the sum of RM132,496.25. The said claim has been filed as Johore Bahru High Court Civil Suit No. 263 of 1980 which is pending and yet to be disposed of. Relying on this pending action against the petitioning creditor, the judgment debtor seeks for stay of these proceedings. In the circumstances, in my view, the judgment debtor is in fact seeking for a stay of the proceedings under s. 97 of the Act pending the outcome of the said civil claim and this is not an application for stay of proceedings under s. 6(5) of the Act. I deal with the application accordingly.

The provisions of s. 97 of the Act are as follows:

> 97. The Court may at any time, for sufficient reason, make an order staying the proceedings under a bankruptcy petition, either altogether or for a limited time, on such terms and subject to such conditions as the Court thinks just.

And there is no doubt at all that a judge is vested with jurisdiction to stay proceedings under a bankruptcy petition, albeit discretionary, where a judgment debtor has successfully shown sufficient reason therefor. However, in exercising such discretion, on being moved by motion by the judgment debtor, as in this case, the judge has to take into account factors which are relevant surrounding the circumstances of the institution of the bankruptcy petition.

It has to be borne in mind that bankruptcy will affect not only the judgment debtor and his creditors but also the general public and in exercising the discretion under s. 97 of the Act, I have to weigh public interest to that of the interest of the judgment debtor. Further, though the Court, in a proper case, may stay the proceedings, it is the duty of the Court for each case, in considering how to exercise its discretion, to have regard of the circumstances of the case.

It would be wrong for me to express any opinion as to the probable outcome of the Johore Bahru High Court Civil Suit No. 263 of 1980. I cannot say it is a frivolous action, but, on the other hand, it is not plain on the pleadings that it is bound to succeed. I have to have regard to a number of other circumstances.

Before the Singapore High Court, the judgment debtor was represented by counsel and the petitioning creditor obtained judgment with the said counsel consenting to the judgment being entered against the judgment debtor. The consent judgment was granted in 1974 and registered in Johore Bahru High Court in 1975. No action was taken by the judgment debtor to have the consent judgment or the order of this Court set aside. It was only in 1980, well after 5 years had lapsed, that an action against the petitioning creditor was begun and there is nothing to say when the said action will be finally disposed of. It may well be determined finally in a year or two and such a length of time is too long for the Court to allow the bankruptcy proceedings to be stayed.

In the Johore Bahru High Court Civil Suit No. 263 of 1980, the judgment debtor claims that the alleged debtor arose in a course of transaction between the judgment debtor and the petitioning creditor sometime in 1972-73. It is clear that the alleged cause of action arose even before the consent judgment was awarded by the Singapore High Court on 6 April that, the judgment debtor had not only failed to raise the cause of action in a counterclaim in that proceedings, he had consented to a judgment being entered against him.

In my opinion, the ground on which this motion fails in that the petitioning creditor has a *prima facie* right to an order unless the debtor has established some very special circumstances which justify the court in departing from its usual practice. Further, to allow stay until the final disposal of the Johore Bahru High Court Civil Suit No. 263 of 1980 will mean that the stay will extend to a period of 2 years which length of time it too long for the Court to allow bankruptcy proceedings to be stayed.

Also found at [1982] CLJ 157